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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 HOME SALES, INC.,

11 Plaintiff,

12 v.

13 JAMES GARY HAMILTON, BEVERLY
14 E. HAMILTON and DOES 1
15 THROUGH 6, inclusive,

Defendants.

Civil No. 11cv1197 JAH(WVG)

ORDER *SUA SPONTE*
REMANDING ACTION TO STATE
COURT AND DENYING
DEFENDANTS' MOTION TO
PROCEED *IN FORMA PAUPERIS*
[DOC. # 2] AS MOOT

16 Plaintiff Home Sales, Inc. ("plaintiff") filed the instant unlawful detainer action in
17 the San Diego County Superior Court on May 5, 2011. The complaint only alleges state
18 law claims and states it is a limited civil case with a demand under \$10,000.00.
19 Defendants James Gary Hamilton and Beverly E. Hamilton ("defendants"), appearing *pro*
20 *se*, filed a notice of removal on June 1, 2011. Defendants contend the action is removable
21 based on diversity jurisdiction. *See* Doc. # 1 at 1, 30.¹ Concurrent with the removal,
22 defendants filed a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a).
23 *See* Doc. # 2. Notwithstanding payment of any filing fee or portion thereof, a complaint
24 filed by any person proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(a) is subject
25 to a mandatory and *sua sponte* review and dismissal by the court to the extent it is

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27 ¹ Defendants also appear to contend federal question jurisdiction exists based on allegations of civil
28 rights violations and violations of various other federal statutes presented by defendants in their notice of
removal. *See* Doc. # 1 at 1-29. The complaint, however, is devoid of any allegations or contentions
regarding violations of any federal statute. *See* Doc. # 1-1. Thus, these additional contentions clearly fail
and will not be addressed further.

1 “frivolous, malicious, fail[s] to state a claim upon which relief may be granted, or seek[s]
 2 monetary relief from a defendant immune from such relief.” 28 U.S.C. § 1915(e)(2)(B);
 3 Calhoun v. Stahl, 254 F.3d 845, 845 (9th Cir. 2001)(“the provisions of 28 U.S.C. §
 4 1915(e)(2)(B) are not limited to prisoners”); Lopez v. Smith, 203 F.3d 1122, 1126-27
 5 (9th Cir. 2000)(en banc).

6 The federal court is one of limited jurisdiction. *See* Gould v. Mutual Life Ins. Co.
 7 v. New York, 790 F.2d 769, 774 (9th Cir. 1986). As such, it cannot reach the merits of
 8 any dispute until it confirms its own subject matter jurisdiction. Steel Co. v. Citizens for
 9 a Better Environ., 118 S.Ct. 1003, 1012 (1998). “Jurisdiction is power to declare the law,
 10 and when it ceases to exist, the only function remaining to the court is that of announcing
 11 the fact and dismissing the cause.” *Id.* (quoting Ex parte McCardle, 74 U.S. (7 Wall.)
 12 506, 614 (1868)). District courts must construe the removal statutes strictly against
 13 removal and resolve any uncertainty as to removability in favor of remanding the case to
 14 state court. Lowdermilk v. United States Bank Ass’n, 479 F.3d 994, 998 (9th Cir. 2007);
 15 Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir. 1988).

16 Removal jurisdiction is governed by 28 U.S.C. § 1441, *et seq.* A state court action
 17 can only be removed if it could have originally been brought in federal court. Caterpillar,
 18 Inc. v. Williams, 482 U.S. 386, 392 (1987). To establish diversity jurisdiction, the
 19 defendant must show: (1) complete diversity among opposing parties; and (2) an amount
 20 in controversy exceeding \$75,000. *See* 28 U.S.C. § 1332(a). The burden is on the party
 21 invoking the federal removal statute to demonstrate federal subject matter jurisdiction
 22 exists. *See* Emrich v. Touche Ross & Co., 846 F.2d 1190, 1195 (9th Cir. 1988). The
 23 defendant has the burden of establishing that removal is proper and must support its
 24 jurisdictional allegations with competent proof. Duncan v. Stuetzle, 76 F.3d 1480, 1485
 25 (9th Cir. 1996); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (*per curiam*);
 26 Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709, 712 n.3 (9th Cir. 1990).
 27 There is a strong presumption against removal jurisdiction and federal jurisdiction “must
 28 be rejected if there is any doubt as to the right of removal in the first instance.” Gaus, 980

1 F.2d at 566 (citing Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1064 (9th Cir.
2 1979).

3 This Court's review of the record reviews that this case is not suitable for removal
4 because defendants, the party seeking to invoke federal jurisdiction under 28 U.S.C. §
5 1441(b), are residents of California. Doc. # 2 at 3 & n.3. Section 1441(b) states that:

6 Any civil action of which the district courts have original jurisdiction
7 founded on a claim or right arising under the Constitution, treaties or laws
8 of the United States shall be removable without regard to the citizenship or
9 residence of the parties. Any other such action shall be removable only if
none of the parties in interest properly joined and served as defendants is a
citizen of the State in which such action is brought.

10 28 U.S.C. § 1441(b). This Court notes that defendants acknowledge they are residents
11 of California and, as such, they clearly fail to satisfy minimum removal requirements.
12 Doc. # 2 at 3. In addition, this Court notes that the complaint alleges damages of less
13 than \$10,000.00, well below the \$75,000.00 minimum amount in controversy
14 requirement to invoke diversity jurisdiction in this case.

15 This Court finds the removal statute clearly bars defendants who reside in the state
16 where the action is filed to remove a state court action based solely on diversity
17 jurisdiction and the record reflects no support for a finding that the minimum amount in
18 controversy has been met. *See* 28 U.S.C. § 1441(b); Duncan, 76 F.3d at 1485; Gaus, 980
19 F.2d at 566; Nishimoto, 903 F.2d at 712 n.3. Therefore, this Court finds that *sua sponte*
20 remand is appropriate here. Accordingly, defendants' motion to proceed *in forma pauperis*
21 is DENIED as moot.

22 Based on the foregoing, IT IS HEREBY ORDERED that:

23 1 The instant complaint is *sua sponte* **REMANDED** to state court for all
24 further proceedings; and

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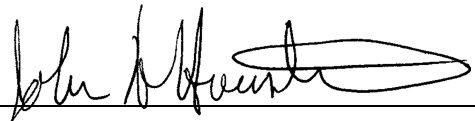
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1 2. Defendants' motion to proceed *in forma pauperis* [doc. # 2] is **DENIED** as
2 moot.

3 DATED: June 6, 2011

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5 JOHN A. HOUSTON
6 United States District Judge
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